IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MPM No.616 of 2007

Decided on : October 26, 2007

State of H.P. **…Petitioner.**

Versus

Gafar and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Deepak Kaushal, Advocate.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for offences punishable under Sections 376 read with Section 511 IPC and 302 IPC for allegedly attempting rape on a young girl, named Farida, aged about 16 years, and on their failure in the said attempt for murdering her so that she did not remain alive to lodge report against them.

3. The incident allegedly took place on 30th August, 2004, some time between 1 p.m. and 2 p.m., at the residence of the girl, when her mother had gone to the school where she was employed as a Peon and her brother had gone to the place of the respondents to work for them as a labourer. Initially, it was felt that the girl had died by electrocution and she was buried on the day next following the day of her death without any postmortem examination.

Whether reporters of the local papers may be allowed to see the judgment?

4. On 27th September, 2004, the mother of the girl lodged a complaint with the Superintendent of Police, which is Ex. PW-1/A, in which it was alleged that she suspected that the deceased had been first raped and then murdered by the respondents, because when she returned home and found the deceased lying dead and started crying, the respondents alongwith other villagers came to her place and started insisting that the girl be buried immediately.

5. On receipt of the complaint, matter was inquired into. Dead body was exhumed, as per orders of the Superintendent of Police, on 30th October, 2004. The doctor noticed evidence of throttling, because there was ante-mortem fracture of hyoid bone and gave the opinion that, in all probability, the cause of the death was the fracture of the said bone.

6. It is only in the opinion of the doctor that it is mentioned that the fracture of hyoid bone was ante-mortem. He has not made any specific observation that the said fracture was ante-mortem or post-mortem. The evidence on record shows that the dead body was found lying in the grave wrapped in two white cloth sheets, then it was covered with tarpaulin and then there were logs of wood, and those logs were covered with sand and earth. Possibility cannot be ruled out that the fracture of hyoid bone was caused while placing heavy wooden logs on the dead body in the grave. He also did not find any mark of injury on the neck, which fact suggests that no violence had been apparently used to cause fracture of hyoid bone.

7. We find absolutely no evidence connecting the accused with the crime. Nobody has come forward to say that the respondents were seen entering or coming out of the house of the deceased around the time when the death took place, especially when the house of the

deceased is situated in a thickly populated area. The only thing that has been testified against the respondents is that they advised that the dead body be buried without any delay and they arranged the coffin or that about 15-20 days after the death when the mother of the deceased, namely PW-1 Shamshadi, started accusing the respondents openly and publicly of rape and murder of her daughter, they allegedly threatened her (the mother of the deceased). The doctor, who conducted the postmortem examination, namely PW-10 Dr. V.K Mishra, did not find any evidence of rape or attempted rape on the dead body.

8. Since there is no cogent and convincing evidence showing that this was a case of attempted rape and murder, and in any case there being no evidence, direct or circumstantial, connecting the respondents with the alleged murder, prayer for grant of leave to appeal is declined. Application is accordingly dismissed.

(Surjit Singh), J

October 26, 2007(sd) **(Surinder Singh), J**